

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:12.12.2006

CORAM:

THE HON'BLE MR. JUSTICE P. SATHASIVAM

AND

THE HON'BLE MR. JUSTICE S. TAMILVANAN
WRIT PETITION NO.22574 of 2001

B. Padmaiah .. Petitioner

vs.

1.The Union of India rep. By
the Secretary,
Ministry of Home Affairs
New Delhi.

2.The Director General
Central Industrial Security Force
CISF Headquarters
Block No.13,CGO Complex
Lodhi Road, New Delhi.

3.The Inspector General
CISF, South West Sector,
RCFL Complex
Mumbai.

4.The Deputy Inspector General
CISF Southern Zone
D Block, Rajaji Bhavan
Besant Nagar
Chennai 90.

5.The Group Commandant
CISF Group Headquarters
D Block, Rajaji Bhavan
Besant Nagar
Chennai 90.

6.The Deputy Commandant
CISF Unit, CPCL,
Manali, Chennai 68.

.. Respondents

Petition filed under Article 226 of the Constitution of
India praying for issuance of a writ of certiorarified mandamus
calling for the records relating to the impugned order of the

third respondent in order No.V-11014/61/Sz/LC/SWS/2K/2190 dated 31.3.2001 confirming the order sfo the fourth respodnet in No.11014/54/2K/L&R (SZ)/9445 dated 27.11.2000 and the roder of the fifth respodnet in No.V-15014/Maj.05/BP/MRL/Ad.VI/360 dated 16.6.2000 and quash the same and direct the respondent to reinstate the petitioner in service with back wages continuity of service and all other attendant benefits.

For petitioner : Mr. N.G.R. Prasad
for Mr. T.N. Sugesh

For respondents : Mr. K. Ramakrishna Reddy
Additional Central Govt.,
Standing Counsel.

ORDER

(Order of the Court was made by P. SATHASIVAM,J.)

Aggrieved by the orders of the respondents dated 16.6.2000, 27.11.2000 and 31.3.2001, the petitioner has filed the above writ petition to quash those orders and to direct the respondents to reinstate him in service with backwages, continuity of service and all other attendant benefits.

2. The petitioner, B.Padmaiah, Constable in Central Industrial Security Force (in short, 'C.I.S.F.') Unit, M.R.L. Manali was dealt with under Rule 34 of the Central Industrial Security Force Rules, 1969, (in short, 'C.I.S.F. Rules') on the charges mentioned in the Article of Charge, which reads as follows:

"Article of Charge-I

"Gross negligence and dereliction of duty in that CISF No.834950228 Constable B. Padmaiah of CISF Unit MRL, Manali, detailed for duty at N.T.A. Patrolling in OTA Plant of MRL in "A" shift duty on 18.02.98, indulged in illegal gratification and collected money from Supervisor for loading grass at grass loading point."

"STATEMENT OF IMPUTATION OF MISCONDUCT AND MISBEHAVIOUR IN RESPECT OF THE ARTICLE OF CHARGE FRAMED AGAINST NO.834050228 CONSTABLE B. PADMAIAH OF CISF UNIT MRL, MANALI, CHENNAI - 600 068.

ARTICLE-I

That No.834050228 Constable B. Padmaiah of CISF Unit MRL Manali was detailed for 'A' shift duty from 0500 hrs to 1300 hrs at N.T.A. Patrolling in OTA plant. The company Commander A.P. Velu of this Unit had received an information at about 11.30 hrs from Shri Ravichandran Supervisor, Rajeshwari Contractors

that one CISF sentry who was performing duty at N.T.A. PTL in OTA was demanding money from him for grass loading point. On receiving the information, the Company Commander along with SI/EXE S.P. Muthu In charge, Crime and Int Section went to OTA where Shri Ravichandran was present. The Company Commander advised him to give the Constable 02 (Two) particular currencies of 10 rupees denomination after putting identification marks on them. They waited at the OTA gate and Shri Ravichandran went to the CISF sentry at the grass loading point and handed him over the money which the sentry was demanding. The supervisor Shri Ravichandran came back along with the grass load at the OTA gate and then they proceeded to the grass loading point but they found the grass loading point sentry CISF No.834050228 Constable B. Padmaiah at the crude loading point and asked crude point sentry CISF No.762310778 HC/GD Dan Ram to search CISF No.834050228 Constable B. Padmaiah.

Upon Searching Constable B. Padmaiah the two currency notes bearing No.55L JJ 3716 51B 724192 which had identification marks as put by Inspector/Exe A.P. Velu were recovered from him. The identification of the notes was done by HC/GD Dan Ram in presence of No.884495602 Constable T. Nithiyanantham. Such activity on the part of Constable B. Padmaiah amounts to gross negligence and dereliction of duty and hence the charge. "

3. Since the petitioner's explanation was not acceptable, enquiry was ordered to go into the said charge. Though the petitioner participated in the enquiry, the defence assistance was not provided. In the enquiry proceedings, four prosecution witnesses were examined and five Exhibits were marked. The report of the Deputy Commandant was marked as Court Exhibit-1. On examination of the prosecution witnesses and the documents, the Enquiry Officer submitted his report holding that the charges leveled against the petitioner were proved. The disciplinary authority, Group Commandant, accepted the report of the Enquiry Officer and imposed punishment of removal from service by order dated 16.6.2000. The petitioner preferred an appeal to the Deputy Inspector General, 4th respondent herein on 1.7.2000. The appellate authority, by order dated 27.11.2000, rejected his appeal. Thereafter, the petitioner preferred a revision petition to the Inspector General, 3rd respondent herein, on 5.12.2000, who, rejected the revision petition by order dated 31.3.2001. Hence, the present writ petition before this Court.

4. Heard Mr.N.G.R.Prasad, learned counsel for the petitioner and Mr.K.Ramakrishna Reddy, Additional Central Government Standing Counsel for the respondents.

5. Mr.N.G.R.Prasad, learned counsel for the petitioner, after taking us through the enquiry proceedings, the orders of the disciplinary authority, the appellate authority and the revisional authority, submitted that the petitioner was not provided with an adequate opportunity to put forth his defence before the Enquiry Officer. He further contended that inasmuch as the material witness was not examined, other witnesses being the persons working in CISF, the ultimate conclusion of the Enquiry Officer as well as the disciplinary authority against the petitioner cannot be sustained. According to him, the non-examination of the material witness, viz., Ravichandran, who is the complainant, and non-supply of copy of the report to the Deputy Commandant [Ex.C-1] which was very much relied on by the Enquiry Officer amounts to violation of the principles of natural justice. He also pointed out that in other cases, in respect of similar charges of illegal gratification, the very same respondents had awarded lesser punishment than that of removal from service.

6. On the other hand, Mr.K.Ramakrishna Reddy, learned Additional Central Government Standing Counsel appearing for the respondents, submitted that it is not a case of "no evidence" and de hors the complainant Ravichandran and Dan Ram who retracted before the Enquiry Officer, there were acceptable material in the form of oral and documentary evidence and the same were rightly considered and accepted by the Enquiry Officer as well as the disciplinary authority. According to him, there is no valid ground for interference by this Court.

7. We have carefully considered all the relevant materials and the rival contentions.

8. We have already extracted the Article of charge as well as the Statement of Imputation. The charge against the petitioner is that he was indulging in illegal gratification and collection of money from one Ravichandran, Supervisor of Rajeshwari Contractors. The Statement of Imputation which we have extracted above makes it clear that only at the instance of the said Ravichandran, Supervisor of Rajeshwari Contractors the complaint was made stating that the petitioner demanded money and the said Ravichandran paid the same and on the basis of the said complaint, charge was leveled against the petitioner and proceeded with further. Though the Department has examined as many as four witnesses, admittedly, the said Ravichandran, Supervisor of Rajeshwari Contractors was not examined. There is no material to show whether any attempt was made summoning him to appear before the Enquiry Officer. In such circumstances, Mr.N.G.R.Prasad, learned counsel for the petitioner strongly contended that the said Ravichandran, being a material witness to the charge, and failure to examine him to substantiate his

alleged complaint is fatal to the entire proceedings. In support of the above contention, he relied on the decision of the Supreme Court in *Hardwari Lal vs. State of U.P.* [(1999) 8 SCC 582].

9. In the case before the Supreme Court (*Hardwari Lal's* case - cited supra), the appellant was a Constable in the Police Department in the State of Uttar Pradesh and on the charge that during the night on 16/17.1.1991, under the influence of liquor, he hurled abuses in the police station at Constable Prakash Chandra Pandey, a departmental enquiry was initiated against him and on the basis of the enquiry report, the disciplinary authority passed an order of dismissal which was challenged by the appellant before the Public Service Tribunal, which dismissed his case and the appellant further carried the matter to the High Court by way of writ petition. The ground taken by the Constable before the Tribunal that copies of certain documents like, preliminary enquiry report and the statement of the complainant made to the Inspector Virender Singh were not supplied to him, was rejected by the Tribunal on the basis that the Constable having participated in the preliminary enquiry and inspected the entire records and documents, he should have asked for copies of documents now sought for. Similarly the contention that the non-examination of Virender Singh, who was the complainant in the case and the witness Jagdish Ram, who were allegedly witnessed the incident would be fatal to the proceedings was rejected by the Tribunal on the basis that the examination of Virender Singh was only formal to prove the report dated 17.7.1991 and no prejudice would be caused to the appellant due to such non-examination. The Tribunal also took the view that the evidence of Jagdish Ram was also not important because he had merely accompanied the Constable during medical examination. The High Court affirmed the above findings of the Tribunal and ultimately concluded that apart from the evidence of these two witnesses, there were sufficient material on record to prove the incident and thus, there was no ground to interfere with the order made by the Tribunal and dismissed the writ petition and the same was challenged before the Supreme Court. Before the Supreme Court, the sole ground urged was as to the non-observance of the principles of natural justice by not examining the complainant Shri Virender Singh, and the witness Jagdish Ram. The Supreme Court accepting the above contention, concluded that,

"3. The Tribunal as well as the High Court have brushed aside the grievance made by the appellant that the non-examination of those two persons has prejudiced his case. Examination of these two witnesses would have revealed as to whether the complaint made by Virender Singh was correct or not and to establish that he was the best person to speak to its veracity. So also, Jagdish Ram, who had accompanied the appellant to the hospital for medical examination, would have been an important witness to prove the

state or the condition of the appellant. We do not think the Tribunal and the High Court were justified in thinking that non-examination of these two persons could not be material. In these circumstances, we are of the view that the High Court and the Tribunal erred in not attaching importance to this contention of the appellant."

10. Highlighting the evidence of other witnesses, the learned Additional Advocate General appearing for the State of Uttar Pradesh submitted before the Supreme Court that there were other materials which were sufficient to come to the conclusion in one way or the other. Rejecting the said contention, the Supreme Court held that,

"4. But while appreciating the evidence on record the impact of the testimony of the complainant cannot be visualised. Similarly, the evidence of Jagdish Ram would also bear upon the state of inebritation, if any, of the appellant."

After holding so, Their Lordships concluded that,

"5. In the circumstances, we are satisfied that there was no proper enquiry held by the authorities and on this short ground we quash the order of dismissal passed against the appellant by setting aside the order made by the High Court affirming the order of the Tribunal and direct that the appellant be reinstated in service. "

The principle laid down therein is squarely applicable to the case on hand since the witness Ravichandran, Supervisor who is said to have made the complaint was not examined. As observed by the Supreme Court, failure to examine the material witness amounts to violation of principles of natural justice. Further, the Department had not taken any step to examine the said Ravichandran and there is no explanation for the same. In such circumstances, we are of the view that the evidence of Ravichandran is material to prove whether he made any such complaint against the petitioner and further more, he is the best person to speak about the veracity of the said complaint.

11. It is also relevant to note that the enquiry records revealed that there is no written complaint by the said Ravichandran. At this juncture, the following questions and answers by P.W.2 Inspector A.P. Velu are relevant.

1. Qn.: Who was the complainant?

Ans: Supervisor of Rajeshwari Contractors.

2. Qn.: How was the complaint lodged?

Ans: By telephone.

3. Qn.: Did the Supervisor of Rajeshwari Contractors give anything in writing regarding the incident?

Ans: Yes, he gave me written complaint.

But, the above statement cannot be accepted as correct, because on the question, 'Was the complaint a written one?', another witness, by name, S.P. Muthu, answered 'No'. He further mentioned that the complaint in the form of telephone call was received by the Inspector A.P. Velu. In the light of the inconsistent statement and of the fact that there is no written complaint, as observed by the Supreme Court in Hardwari Lal's case (cited supra), the evidence of the said Ravichandran is relevant.

12. Mr.N.G.R.Prasad, learned counsel further contended that in the absence of evidence of Ravichandran before the Enquiry Officer, his earlier statement said to have been made during the preliminary enquiry cannot be relied upon. In support of the above contention, he relied on the decision of the Apex Court in Kuldeep Singh vs. Commissioner of Police [AIR 1999 SC 677]. In the case before the Supreme Court, the non-production of complaint was sought to be justified with reference to Rule 16 (3) of the Delhi Police (F&A) Rules, 1980. The Supreme Court, after finding that the complaint was not before the Court, but the statement said to have been made earlier was placed before the Enquiry Officer, concluded that the absence of original complaint, would indicate that there was, in fact, no complaint in existence. After saying so, Their Lordships held that,

"32. Apart from the above, Rule 16(3) has to be considered in the light of the provisions contained in Article 311(2) of the Constitution to find out whether it purports to provide reasonable opportunity of hearing to the delinquent. Reasonable opportunity contemplated by Article 311(2) means "Hearing" in accordance with the principles of natural justice under which one of the basic requirements is that all the witnesses in the departmental enquiry shall be examined in the presence of the delinquent who shall be given an opportunity to cross-examine them. Where a statement previously made by a witness, either during the course of preliminary enquiry or investigation, is proposed to be brought on record in the departmental proceedings, the law as laid down by this Court is that a copy of that statement should first be supplied to the delinquent, who should thereafter be given an opportunity to cross-examine that witness. "

13. In the case on hand, the Enquiry Officer heavily relied on the statement of Ravichandran, Supervisor of Rajeshwari

Contractors. The translated copy of the said statement which is available at page No.77 of the typed-set of papers shows that on 18.2.1998 when he was loading dry grass in his contractor's truck No. TMV 7925 at ETP II area, the Constable B.Padmaiah who was on loading witness duty demanded money from him. According to the said Ravichandran, he declined to pay and conveyed the matter to CISF Officer. At the instance of Inspector A.P. Velu and the Sub-Inspector S.P. Muthu, he took two ten rupee notes from them and put their initials and gave them to the constable B.Padmaiah who demanded money. As observed in the decisions referred to above, if the above statement is to be relied on, the author of the statement, viz., Ravichandran has to be examined and then only, the delinquent would get an opportunity to cross-examine as to the veracity of the statement. Marking a statement not through the author of the statement violates the principles of natural justice, as the delinquent loses the valuable opportunity to cross-examine the author to test the veracity of the statement said to have been made by him. This is clear from Para-32 of the judgement in Kuldeep Singh case, (cited supra).

14. Apart from the above infirmities, learned counsel for the petitioner also brought to our notice that the Enquiry Officer heavily relied on the special report of the Deputy Commandant, CISF Unit, MRL, Manali, Chennai-68, and according to him, the petitioner was not put on notice of the report or supplied with a copy of the same. Inasmuch as the petitioner was not furnished with a copy of the said report, it is impermissible for the Enquiry Officer to rely on the same and arrive at a conclusion against the petitioner.

15. The other infirmity pointed out by the learned counsel for the petitioner is that one Dan Ram who was performing General Shift Duty was examined as P.W.4, who, in his evidence has stated that on 18.2.1993 at about 12.45 hours when he was performing General Shift Duty at Crude weigh bridge in E.T.P. area, the Inspector A.P. Velu and the Sub-Inspector S.P. Muthu came to his duty post along with Constable B.Padmaiah and the Inspector A.P. Velu ordered him to conduct body search on the said Constable B.Padmaiah. According to him, pursuant to the said direction, he carried out the body search on the constable B.Padmaiah and found some canteen coupons in the left side pant pocket. On a specific question, "Did you see any money in the pocket of Constable B.Padmaiah?", he answered "No". It is clear that among the witnesses, P.W.4 Dan Ram is the prime witness who conducted body search on the Constable B.Padmaiah and emphatically reported that there was no currency note in his pant pocket. We are of the view that among the witnesses, the statement of P.W.4 who searched the pocket of the petitioner in the presence of officers is very relevant as to the charge leveled against the petitioner, and in view of his retraction and categorical statement, the Enquiry Officer ought to have accepted the defence taken by the petitioner. We are conscious of the fact that normally this Court would not interfere with the

finding of fact recorded in the domestic enquiry, but, if the finding of guilty is perverse, it would be amenable to judicial scrutiny. We are also aware of the settled principle that if a decision is arrived at on the basis of no evidence or evidence on which no reliable and reasonable person would act, such decision would be perverse.

16. Mr.K.Ramakrishna Reddy, learned counsel for the respondents submitted that it is not a case of no evidence to interfere with the conclusion arrived at by the Enquiry Officer as well as the Disciplinary authority. He heavily relied on the observations/directions of the Supreme Court in Paras-10 and 11 of the judgement in Government of Andhra Pradesh vs. Mohd. Nasurullah Khan [(2006) 2 SCC 373], which run as follows:

" 10. From the finding recorded by the High Court it clearly appears that the High Court reappreciated the evidence as an appellate authority. Apart from reappreciating the evidence, which is not permissible in law, the High Court also fell in grave error by directing the Government Pleader and the learned counsel for the respondent herein to again view the cassettes. It is on record that the inquiry officer relied on the video cassettes displayed during the inquiry as part of additional evidence. The finding has been clearly recorded by the inquiry officer on the basis of the evidence adduced by PWs 1,2,3 and 4 during the inquiry.

11. By now it is a well-established principle of law that the High Court exercising power of judicial review under Article 226 of the Constitution does not act as an appellate authority. Its jurisdiction is circumscribed and confined to correct errors of law or procedural error, if any, resulting in manifest miscarriage of justice or violation of principles of natural justice. Judicial review is not akin to adjudication on merit by reappreciating the evidence as an appellate authority. "

We verified the factual details of the said case. It is seen that the High Court directed the Government Pleader as well as the counsel for the respondents to review the cassettes which were relied on by the Enquiry Officer as the Enquiry Officer relied on the Video Cassettes displayed during the enquiry as part of additional evidence. In spite of the clear finding by the Enquiry Officer on the basis of evidence adduced by P.Ws.1 to 4 during the enquiry, the High Court reviewed the very same cassette and arrived at a different conclusion which is held by the Supreme Court as impermissible. However, the said decision is not helpful to our case for the reasons mentioned in the earlier

paragraphs.

17. The next decision relied on by Mr. Ramakrishna Reddy is the judgement of Supreme Court reported in *Canara Bank vs. V.K. Awasthy* [(2005) 6 SCC 321], wherein it is held that Court would not interfere with the decision of the Enquiry Officer/Disciplinary Authority unless it is illegal or suffering from procedural impropriety or irrational, is also not applicable to the facts of the case, as we have already noticed serious lapse in the enquiry, namely the non-examination of the material witness, retraction of P.W.4, who is said to have searched the pant pocket of the petitioner, etc.

18. The learned counsel appearing for the respondents submitted that even though the complainant was not examined at the regular enquiry, in view of the existence of evidence of other witnesses, the conclusion cannot be faulted with and in support of the same, he relied on the decision of the Apex Court in *Superintendent, Government T.B. Sanatorium vs. J. Srinivasan* [(1998) 8 SCC 572], wherein in para-7, Their Lordships held,

"7. Taking the second ground first, we find that even though the complainant or her husband were not examined at the regular enquiry, there is other evidence including the evidence of the co-worker and another co-patient upon which the finding recorded against the respondent can be sustained. The Tribunal could not have gone into the adequacy of evidence. It could interfere only if it is a case of "no evidence" and that is not the case here."

Though in the above decision it was held that it would be possible for the Enquiry Officer to rely on the evidence of other witnesses and that the conclusion arrived at by him could not be termed as being based on no evidence, in the case on hand, as observed earlier, the charge proceeded that the petitioner demanded gratification and the same was acceded to and paid by Ravichandran, the complainant. On the facts of the case, the evidence of Ravichandran, who was not examined, is paramount and apart from that, among other witnesses, P.W.4, who is the prime witness, retracted from his earlier stand and he did not support the charge, and hence, we are of the view that the above said decision is also not helpful to the respondents. For the same reasons, the other decision, viz., *State of Tamil Nadu vs. M.A. Waheed Khan* [(1998) 8 SCC 723] is also not applicable to the case on hand.

19. It is useful to mention here the observation of the Supreme Court reported in *Delhi Cloth and General Mills Co. Ltd. vs. Ludh Budh Singh* [(1972) SCC 1 LLJ 180], wherein Their Lordships held that when an allegation of misconduct is leveled against a person, it is the duty of the person making the allegation to establish the same and not for the accused to

adduce evidence to the effect that he is not guilty. It is seen from the records that though the petitioner's defence assistance was initially accepted by the Department, the person who had given the defence assistance was subsequently transferred to other place and hence, he did not attend the enquiry proceedings. The fact remains that the entire enquiry was defended by the petitioner himself without defence assistance. We have also pointed out that copy of the report of the Deputy Commandant was not furnished to the petitioner, though the Enquiry Officer heavily relied on it.

20. Apart from the above infirmities, learned counsel for the petitioner has also brought to our notice that in respect of similar charge of gratification and receipt of money, the very same disciplinary authority/appellate authority had taken lenient view and awarded lesser punishment and those orders are available in the typed-set of papers. As rightly argued by the learned counsel for the respondents, the said aspect is not a relevant factor as the personnel working in CISF should maintain strict discipline, but the fact remains that the respondents have taken different yardsticks and their decision varies from person to person even in respect of corruption charge.

21. As rightly pointed out by the learned counsel for the petitioner, even in the enquiry the Enquiry Officer proceeded with a point whether the constable B.Padmaiah demanded money from Ravichandran, Supervisor of Rajeshwari Contractors for supervising the grass loading in OTA area. In such circumstances, as rightly pointed out by the learned counsel for the petitioner in the light of the decision of the Supreme Court in Hardwar Lal's case (cited supra), non-examination of the material witness, viz., Ravichandran has prejudiced the petitioner. We are also satisfied that the infirmities pointed out would undoubtedly amount to violation of principles of natural justice. Therefore, the impugned orders are liable to be set aside. The failure to examine the complainant whose complaint is the basis for the disciplinary action against the petitioner and the failure to provide an opportunity to the petitioner to test the veracity of the complaint made against him has resulted in the deprivation of right of the petitioner amounting to gross violation of principles of natural justice and thereby, making the entire disciplinary proceedings vitiated. In view of the specific statement of P.W.4 Dan Ram, who conducted the body search of the petitioner that no money was found in his pocket and he took canteen coupons from his pocket, the contrary conclusion arrived at by the Enquiry Officer and accepted by the disciplinary authority cannot be sustained. We are also satisfied that the failure to provide defence assistance to the petitioner is a violation of the provisions of Rule 34 of CISF Rules, besides the violation of the principles of natural justice. All these material and relevant aspects have not been properly considered by the appellate and revisional authorities.

Under these circumstances, the impugned orders of the respondents dated 16.6.2000, 27.11.2000 and 31.3.2001 are quashed and there shall be a direction to the respondents to reinstate the petitioner in service forthwith with backwages, continuity of service and all other attendant benefits. The writ petition is allowed. No costs.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

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To

- 1.The Secretary,
Union of India
Ministry of Home Affairs
New Delhi.
- 2.The Director General
Central Industrial Security Force
CISF Headquarters
Block No.13,CGO Complex
Lodhi Road, New Delhi.
- 3.The Inspector General
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Besant Nagar
Chennai 90.

6.The Deputy Commandant
CISF Unit, CPCL,
Manali, Chennai 68.

1 cc to Mr.K.Ramakrishna Reddy, SCGSc, SR. 61437
1 cc to Mr.T.N. Suresh, Advocate, sr. 61593

W.P.No.22574 of 2001

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